

Number: **200910004**
Release Date: 3/6/2009

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-123609-08

Date:

November 14, 2008

Legend:

Taxpayer 1	=
Taxpayer 2	=
Revocable Trust	=

State Code	=
Date 1	=
Date 2	=
A	=
B	=
C	=

Dear :

This is in response to a letter dated April 17, 2008 from your authorized representative requesting rulings regarding the allocation of generation-skipping transfer (GST) exemption to certain trusts.

The facts submitted and the representations made are as follows. Prior to their deaths, Taxpayers 1 and 2, husband and wife, executed Revocable Trust, an inter vivos revocable trust. In addition, each executed a will providing that on their respective deaths, each person's residuary estate was to be distributed to Revocable Trust.

Article III, Section 3.2 of Revocable Trust provides that upon the death of the first grantor to die the trust estate is to be divided into four trusts: Management Trust, Family Trust, Exempt Marital Trust, and Marital Trust.

Section 3.2(a) provides that Management Trust is to be funded with the surviving grantor's separate property and interest in community property. Section 3.2(b) provides that Family Trust is to be funded with the deceased grantor's "adjusted exemption amount." Section 3.2(c) provides that Exempt Marital Trust is to be funded with the

“adjusted exempt marital trust gift.” Section 3.2(d) provides that Marital Trust is to be funded with the balance of the trust estate.

Article XVIII, Section 18.13(a), provides that the “exemption amount” is a dollar amount equal to the maximum amount that would result in no federal estate tax payable by the deceased grantor’s estate if such tax were computed by giving effect to all relevant tax credits.

Section 18.13(b) provides that the “adjusted exemption amount” is a dollar amount equal to the difference between the exemption amount and the value of property passing to Family Trust pursuant to Article XVI (containing provisions relating to life insurance policies).

Section 18.15(a) provides that the “exempt marital trust gift” is a dollar amount equal to the difference between the deceased grantor’s available GST exemption amount and the exemption amount.

Section 18.15(b) provides that the “adjusted exempt marital trust gift” is a dollar amount equal to the difference between the exempt marital trust gift and the value of the property passing to Exempt Marital Trust pursuant to Article XVI (life insurance).

Taxpayer 1 died on Date 1, survived by Taxpayer 2. The executor of Taxpayer 1’s estate retained an accountant to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Taxpayer 1’s estate.

It is represented that at the time of Taxpayer 1’s death, the “exemption amount” as defined in Revocable Trust was \$A and Taxpayer 1’s available GST exemption amount was \$B. Pursuant to Section 3.2(b), Family Trust was to be funded with the “adjusted exemption amount,” which is equal to the exemption amount, \$A, minus any amount passing to Family Trust pursuant to Article XVI (life insurance). Therefore, at Taxpayer 1’s death, Family Trust was to be funded with assets totaling \$A.

Pursuant to Section 3.2(c), Exempt Marital Trust was to be funded with the “adjusted exempt marital trust gift,” which is the difference between Taxpayer 1’s available GST exemption amount, \$B, and the exemption amount, \$A, minus the value of property passing to Exempt Marital Trust pursuant to Article XVI (life insurance). Therefore, at Taxpayer 1’s death, Exempt Marital Trust was to be funded with assets totaling \$C (\$B - \$A).

On Schedule M of the Form 706 filed for Taxpayer 1’s estate, the executor made the qualified terminable interest property (QTIP) election under § 2056(b)(7) with respect to Exempt Marital Trust and Marital Trust. However, Schedule M incorrectly listed the value of the property passing to Exempt Marital Trust as \$B instead of \$C, the amount that passed to the trust pursuant to the formula contained in Section 3.2(c).

On Schedule R, the reverse QTIP election under § 2652(a)(3) was made with respect to Exempt Marital Trust. However, the amount passing to the trust was incorrectly listed as \$B, instead of \$C. Therefore, on Schedule R, the executor allocated \$B of GST exemption to Exempt Marital Trust, instead of \$C.

Further, it is represented that Exempt Marital Trust was funded with \$B, instead of \$C. As a result, Exempt Marital Trust was over-funded by \$A.

Taxpayer 2 died on Date 2. The attorney retained to prepare the Form 706 for Taxpayer 2's estate discovered that in reporting the QTIP election and the reverse QTIP election on Taxpayer 1's Form 706, the value of the property passing to Exempt Marital Trust had been incorrectly listed as \$B instead of \$C, and that excessive GST exemption in the amount of \$A had been incorrectly allocated to Exempt Marital Trust. Further, he determined that the trust had been over-funded by \$A,

State Code provides, in part, that a trustee will administer a trust in good faith according to the terms of the trust.

The following rulings have been requested:

1. The reverse QTIP election made on Schedule R of the Form 706 filed for Taxpayer 1's estate attached only to \$C, the value of assets required to be distributed to Exempt Marital Trust pursuant to Section 3.2(c) of Revocable Trust.
2. Pursuant to § 2632(e)(1), Taxpayer 1's GST exemption in the amount of \$A was automatically allocated to Family Trust, and, as a result, the inclusion ratio of Family Trust for GST Tax purposes is zero.

Law and Analysis:

Section 2601 imposes a tax on every generation-skipping transfer made by a transferor to a skip person.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides, in part, that the inclusion ratio with respect to any property transferred in a generation-skipping transfer shall be the excess (if any) of 1 over the applicable fraction determined for the trust from which such transfer is made.

Section 2642(a)(2) provides, in part, that the applicable fraction is a fraction the numerator of which is the amount of the GST exemption allocated to the trust and the denominator of which is the value of the property transferred to the trust.

As in effect for the years at issue in this case, § 2631(a) provided that for purposes of determining the inclusion ratio, every individual is allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c) as then in effect), which may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor.

Section 2631(b) provides that any allocation, once made, shall be irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of the individual's GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, that an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

Section 26.2632-1(d)(1) provides, in part, that an allocation of a decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706 or Form 706NA) filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions actually granted). An allocation of GST exemption to a trust (whether or not funded at the time the Form 706 or Form 706NA is filed) is effective if the notice of allocation clearly identifies the trust and the amount of the decedent's GST exemption allocated to the trust.

Section 2632(e)(1) provides that any portion of such individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows: first, to property that is the subject of a direct skip occurring at such individual's death; and second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or taxable termination might occur at or after such individual's death.

Under § 2652(a)(1) and § 26.2652-1(a)(1), the "transferor" for GST tax purposes is, generally, the individual with respect to whom the property was last subject to the federal estate or gift tax. An individual is treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in part, that in the case of any trust with respect to which a

deduction is allowed to the decedent's estate under § 2056(b)(7), the estate may elect to treat all of the property in such trust for purposes of chapter 13 as if the election to be treated as QTIP had not been made (a reverse QTIP election).

Section 26.2652-2(b) provides that an election under § 2652(a)(3) is made on the return on which the QTIP election is made.

In this case, under the terms of Section 3.2(c) of Revocable Trust, \$C passed to Exempt Marital Trust. Therefore, only the \$C that passed to the Exempt Marital Trust was properly subject to the reverse QTIP election made with respect to Exempt Marital Trust. Accordingly, based upon the facts submitted and the representations made, the allocation of GST exemption made on Schedule R with respect to Exempt Marital Trust in excess of \$C was void as provided in § 26.2632-1(b)(4)(i), because an allocation of \$C was the amount necessary to obtain an inclusion ratio of zero with respect to the trust. Consequently, pursuant to § 2632(e)(1), \$A, the amount of Taxpayer 1's available GST exemption remaining after the allocation of \$C to Exempt Marital Trust, was automatically allocated to Family Trust effective as of Taxpayer 1's date of death. Family Trust has an inclusion ratio of zero, provided the amount of GST exemption allocated to this trust is equal to the amount transferred to this trust for federal estate tax purposes. The corpus of Marital Trust, as reflected on Taxpayer 2's Form 706, must be adjusted consistent with this ruling.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

George L. Masnik

George L. Masnik
Branch Chief, Branch 4
(Office of Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes